

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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Date of Decision: 18.08.2017

1. CR No.3127 of 2017 (O&M)

Lalit Sharma

..... Petitioner

Versus

Subhash Chander and another

..... Respondents

2. CR No.3143 of 2017 (O&M)

Lalit Sharma

..... Petitioner

Versus

Subhash Chander and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Rajesh Gupta, Advocate
for the petitioner.

ANIL KSHETARPAL, J. (ORAL)

CM-9709-CII-2017 in CR No.3143 of 2017

Application is allowed. Legal heirs are brought on record
subject to all just exceptions.

CR No.3127 of 2017 (O&M)

By this common judgment, I shall be disposing of two revision
petitions bearing CR No.3127 of 2017 titled 'Lalit Sharma Vs. Subhash
Chander and another' and CR No.3143 of 2017 titled 'Lalit Sharma Vs.
Subhash Chander and another'.

It would be necessary to notice certain facts. One Bal Kishan

was owner of two plots measuring 200 sq. yards each i.e. plot No.956 and 957. On the death of Bal Kishan, property was inherited by four legal heirs, namely, Raj Kanta-widow, Parmod Kumar and Vinod Kumar-sons and Kusum Lata as a daughter. Therefore, everyone got 1/4th share each. Vinod Kumar and Kusum Lata executed a transfer deed in favour of Parmod Kumar. Thus, Parmod Kumar became owner of 3/4th share whereas Raj Kanta was owner of 1/4th share. Parmod Kumar entered into an agreement to sell with Subhash with respect to half share of 200 sq. yards plot with specific boundary. Since Parmod Kumar did not honour the agreement to sell, therefore, Subhash filed a suit for specific performance of agreement to sell. The suit was instituted on 02.12.2005. Similarly, Raj Kanta also entered into an agreement to sell with Subhash with specific boundaries with respect to her share of the property. Raj Kanta also did not honour the agreement and Subhash on the same date filed a suit for specific performance of agreement to sell. Both the suits were decreed of course ex parte in favour of Subhash Chander.

Petitioner claims that Parmod Kumar had sold 200 sq. yards plot to him vide sale deed dated 05.12.2005 registered on 06.12.2005.

Courts below while dismissing the objection have found that the sale deed in favour of petitioner is hit by the principle of lis pendence as the suit was instituted on 02.12.2005 whereas the sale deed in the present case was instituted on 05.12.2005.

Learned counsel for the petitioner has very fairly stated that in execution of both the decrees, Subhash has taken over the possession. However, he comes out with a prayer that Parmod Kumar is still left with some share in the property. Parmod Kumar became owner of 3/4th share i.e.

300 sq. yards plot. Decree in favour of Subhash is only with respect to 200 sq. yards plot i.e. 100 sq. yards against Parmod Kumar and 100 sq. yards against Raj Kanta. He prays that since the possession has already been delivered with respect to the 200 sq. yards plot to Subhash, therefore, the only remedy available to the petitioner is to file a suit for partition. He further claims that he is still in possession of some portion of the property.

The finding of the Court that the sale deed in favour of the petitioner is hit by the principle of lis pendence is correct. However, petitioner would be at liberty to seek partition of the property.

Revision petitions are dismissed.

18.08.2017
Dinesh Bansal

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned	Yes / No
Whether Reportable	Yes / No